

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Civil Action No. 1:20-cv-974

KEITH T. ALLEN,)
)
Plaintiff,)
)
v.)
)
WILLIE ALBERT)
MELLERSON and)
FREEHOLD CARTAGE, INC.)
Defendants.)

NOTICE OF REMOVAL TO
FEDERAL COURT

Defendants Willie Albert Mellerson and Freehold Cartage, Inc. ("Defendants"), by and through undersigned counsel, respectfully remove the above-entitled action from the Superior Court of Rockingham County, North Carolina, to the United States District Court for the Middle District of North Carolina, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446(b)(3). In support of this Notice of Removal, Defendants state as follows:

1. This action is being removed to federal court based on diversity of citizenship between the parties and an amount in controversy greater than \$75,000.00.

2. On July 16, 2020, Plaintiff filed a Complaint in the Superior Court of Rockingham County, North Carolina, styled "Keith T. Allen v.

Willie Albert Mellerson and Freehold Cartage, Inc." that was assigned Civil No. 20 CVS 1699 ("superior court action").

3. Defendant Freehold Cartage, Inc. was served with the Complaint on or about July 29, 2020, and Defendant Willie Albert Mellerson, was served with the Complaint on or about August 3, 2020. Defendants filed their Answer on September 28, 2020. (See Affidavit of Service, Defendants' Motion for Extension of Time to Serve a Responsive Pleading, and Defendants' Answer to Complaint attached as part of Exhibit A.)

4. Defendants served a Request for Monetary Relief Sought on September 24, 2020. On October 6, 2020, plaintiff served a response to defendants' Request for Monetary Relief Sought, "requesting a sum equal to the total combined limits of liability for all policies of liability insurance which insures all defendants against the loss arising from any and all judgments that may be entered in this case." (See Exhibit B). The limits of the applicable liability insurance policy is \$1,000,000.00. Therefore, defendants may remove this action to federal court pursuant to 28 U.S.C. 1446(b)(3).

5. Plaintiff's claims for relief against Defendants in the Superior Court action are for negligence, respondeat superior, negligent entrustment, and corporate negligence. Plaintiff alleges that, due to the

negligence which resulted in the accident involving the Frontliner truck driven by Defendant Mellerson and owned by Defendant Freehold Cartage, Inc., Plaintiff has sustained severe, painful, and permanent personal injuries. (Complaint ¶ 16-18).

6. The United States District Court for the Middle District of North Carolina has original jurisdiction over the Superior Court action pursuant to 28 U.S.C. § 1332(a) and it may be removed by Defendants pursuant to 28 U.S.C. § 1441(a) and (b), and 1446(b)(3) for the following reasons:

- (a) At the commencement of this action and at the time of this removal, Defendant Freehold Cartage, Inc. was not a North Carolina corporation, and Defendant Mellerson was not a North Carolina citizen or resident.
- (b) The matter in controversy between Plaintiff and the Defendants was, at the commencement of this action and at all relevant times including the date of removal, one in which complete diversity of citizenship exists. Plaintiff is a citizen of the State of North Carolina and none of the Defendants are citizens of the State of North Carolina.
- (c) Plaintiff's Complaint acknowledges that complete diversity of citizenship exists between the plaintiff and the Defendants. The allegations show that: (1) plaintiff is a North Carolina citizen and resident; (2) defendant Mellerson is identified as a South Carolina citizen or resident; and (3) defendant Freehold Cartage, Inc. is identified as a New Jersey corporation.
- (d) Plaintiff is a citizen and resident of the State of North

Carolina.

- (e) Defendant Willie Albert Mellerson is a citizen and resident of South Carolina.
- (f) Defendant Freehold Cartage, Inc. is a corporation organized and existing under the laws of New Jersey, with a principal office and registered office located in Freehold, New Jersey. Its corporate officers, Suzanne Blanchet-Hirst, Thomas J. Blanchet, II, and Michael Hirst are citizens and residents of the State of New Jersey; they are not citizens or residents of North Carolina.
- (g) The amount in controversy between Plaintiff and Defendants in this action, exclusive of interest and costs, exceeds \$75,000.00, on information and belief. See Plaintiff's Response to Request for Monetary Relief Sought served October 6, 2020, Exhibit B attached to this notice. Plaintiff seeks the limits of the liability insurance policy, which is \$1,000,000.00.
- (h) Therefore, Defendants file this notice of removal of this action from the Superior Court, Rockingham County, to the United States District Court for the Middle District of North Carolina.

7. Attached to this notice as Exhibit A are the pleadings filed in this action, including a copy of the Summons, Complaint, Affidavits of Service, Defendants' Motion for Extension of Time to Serve a Responsive Pleading, Answer, and Plaintiff's Reply filed in the Superior Court action.

8. A copy of this Notice of Removal is being served on the Clerk of Superior Court of Rockingham County, North Carolina

contemporaneously with the filing of this Notice of Removal, as shown by the notice attached as Exhibit C.

WHEREFORE, Defendants respectfully request that this action be removed from the Superior Court of Rockingham County, North Carolina, to the United States District Court for the Middle District of North Carolina.

This the 27th day of October, 2020.

CRANFILL SUMNER & HARTZOG LLP

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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2020, I electronically filed the foregoing *Notice of Removal* with the Clerk of Court using the CM/ECF system, and will deposit the foregoing documents in the US Mail, and also serve electronically as set out below to the following counsel of record:

Diana E. Devine
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P.O. Box 1389
Attorneys for Plaintiff

Respectfully, submitted by:

CRANFILL SUMNER & HARTZOG LLP

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